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SUPREME COURT, U.S.

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IN THE
Supreme Court of the United States
October Term, 1972.

No. 72-1058.

EDWARD F. O'BRIEN, *et al.*,
Appellants,
v.

ALBERT SKINNER, Sheriff, Monroe County, *et al.*,
Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF
NEW YORK.

Jurisdictional Statement Filed January 31, 1973.
Probable Jurisdiction noted May 7, 1973.

APPENDIX.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1972.
No. 72-1058.

-----X

EDWARD F. O'BRIEN, on behalf of Himself
and all others similarly situated
in Monroe County as named below,
LEONARD POLITO, KEVIN INGHAM, BRINT
LYLES, RONALD FREY, JEFFREY HOWLAND,
WILLIE F. CLAY, VERNON CANNON,
RICHARD STOCUM, LARRY RANDALL, JOHN
HENRY, ANNE DELYSER, ALICE ELIZABETH
ZAHN, LORRAINE ELSAW, CHRISTINE
VERSTRATEN, JEANNE MITCHELL, JOHN
CHATMAN, CHERRY BULLOCK, MARSHA
PADILLA, CLYDE PHILLIPS, BERNICE
MOGAN, JAMES DONALDSON, RICHARD
HACKLEY, LOUIS GIORGIONE, MITCHELL
STRONG, WILLIAM WYNN, FELIX QUINONES,
MAURICE WOOD, DONALD KENYON, MICHAEL
MARRAPESE, ALEXANDER RIOLA, ROBERT
MITCHELL, JR., WILLIE BALKUM,
STANLEY ROSS, JIMMIE JACKSON, ANIBAL
CINTRON, GEORGE M. KOWALSKI, DELLIE
L. RANDALL, JOSEPH NUCIOLA, LLOYD
S. GRIFFIN, HERMAN L. PETERSON,
BRUCE G. ELDRIDGE, ROBERT F. FRIED,
FRED DUNBAR, CURTIS GRIMES, JAMES
W. GILFIN, DANIEL ALAIMO, ROBERT G.
EVANS, ROBERT L. JONES, MARIO C.
DE LEON, EMANUEL RUSSO, MC KINLEY
LUNDY, JR., JIMMIE RICHARDSON,
EDDY KENDRICKS, WILLIE KENNEDY,
KENNETH HARTWIGH, TIMOTHY INGRAM,
DONALD SWYSTUN, ROBERT L. AGNESS,
RICHARD A. WERTH, MICHAEL HAYES,

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GREGORY HEALY, GARY RAMSEY, JOHNNY
PARNELL, JESSE PURITT, SR., GEORGE
SMITH, DONALD SCHULTZ, WILLIAM
SHEPARDSON, EDDIE J. HENLEY, GEORGE
X. GRANSTON, JR., MIGUEL BALDRICH,
ROBERT A. HUTCHINGS,

Petitioners,

vs.

ALBERT SKINNER, SHERIFF, MONROE COUNTY,
and KENNETH POWER and ROBERT
NORTHROP, et. al., being the Monroe
County Board of Elections,

Respondents.

-----X

CHRONOLOGICAL LIST OF IMPORTANT DATES

<u>Item</u>	<u>Date</u>
Order to show cause, affirmation, verified petition, supporting affidavit, and Exhibit A served on appellees	October 11, 1972
Answer and motion to dismiss served on appellants	October 17, 1972
Hearing in New York Supreme Court, Monroe County (Blauvelt, J.)	October 18, 1972
Judgment of New York Supreme Court, Monroe County (Blauvelt, J.) entered in Monroe County Clerk's Office	October 24, 1972
Notice of appeal by appellants and notice of cross-appeal by appellees served and entered	October 24, 1972
Oral argument before the New York Supreme Court, Appellate Division, Fourth Department	October 26, 1972
Order of the New York Supreme Court, Appellate Division, Fourth Department entered	October 27, 1972
Notice of appeal by appellees served and entered	October 27, 1972

Oral argument before the New York Court of Appeals	October 31, 1972
Order of the New York Court of Appeals entered	November 3, 1972
Notice of appeal by appellants served	November 3, 1972
Appellants' oral application to Judge Scileppi for provisional relief pending appeal orally denied	November 4, 1972
Appellants' application to Mr. Justice Marshall for provisional relief pending appeal filed	November 4, 1972
Order of Mr. Justice Marshall denying appellants' application entered	November 6, 1972
Probable jurisdiction noted	May 7, 1973

ORDER TO SHOW CAUSE.

STATE OF NEW YORK, SUPREME COURT,
COUNTY OF MONROE.

-----X

EDWARD F. O'BRIEN, on behalf of Himself
and all others similarly situated
in Monroe County as named below,
LEONARD POLITO, KEVIN INGRAM, BRINT
LYLES, RONALD FREY, JEFFREY
HOWLAND, WILLIE F. CLAY, VERNON
CANNON, RICHARD STOCUM, LARRY
RANDALL, JOHN HENRY, ANNE DELYSER,
ALICE ELIZABETH ZAHN, LORRAINE ELSAW,
CHRISTINE VERSTRATEN, JEANNE
MITCHELL, JOHN CHATMAN, CHERRY
BULLOCK, MARSHA PADILLA, CLYDE
PHILLIPS, BERNICE MOGAN, JAMES
DONALDSON, RICHARD HACKLEY, LOUIS
GIORGIONE, MITCHELL STRONG, WILLIAM
WYNN, FELIX QUINONES, MAURICE WOOD,
DONALD KENYON, MICHAEL MARRAPESE,
ALEXANDER RIOLA, ROBERT MITCHELL,
JR., WILLIE BALKUM, STANLEY ROSS,
JIMMIE JACKSON, ANIBAL CINTRON,
GEORGE M. KOWALSKI, DELLIE L.
RANDALL, JOSEPH NUCIOLA, LLOYD S.
GRIFFIN, HERMAN L. PETERSON, BRUCE
G. ELDRIDGE, ROBERT F. FRIED, FRED
DUNBAR, CURTIS GRIMES, JAMES W.
GILFIN, DANIEL ALAIMO, ROBERT G.
EVANS, ROBERT L. JONES, MARIO C.
DE LEON, EMANUEL RUSSO, MC KINLEY
LUNDY, JR., JIMMIE RICHARDSON,
EDDIE KENDRICKS, WILLIE KENNEDY,
KENNETH HARTWIGH, TIMOTHY INGRAM,
DONALD SWYSTUN, ROBERT L. AGNESS,
RICHARD A. WERTH, MICHAEL HAYES,
GREGORY HEALY, GARY RAMSEY, JOHNNY

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PARNELL, JESSE PURITT, SR., GEORGE
SMITH, DONALD SCHULTZ, WILLIAM
SHEPARDSON, EDDIE J. HENLEY, GEORGE
X. GRANSTON, JR., MIGUEL BALDRICH,
ROBERT A. HUTCHINGS.

Petitioners,

vs.

ALBERT SKINNER, Sheriff, Monroe County,
and KENNETH POWER and ROBERT
NORTHROP, et. al., being the
Monroe County Board of Elections,

Respondents.

- - - - -X


Upon the annexed verified petition,
the affidavit of Jean M. Askham, the
affidavit of William D. Eggers, and
sufficient cause appearing, it is

Ordered that respondents or their
attorneys show cause before this Court
in a special term, Hall of Justice,
Rochester, New York, on October 17, 1972
at 10:00 a.m. why an order should not
be entered (1) directing the respondent

ORDER TO SHOW CAUSE

Sheriff Albert W. Skinner to permit petitioners to register to vote at the main office of the Board of Elections; (2) in the alternative directing respondent Albert W. Skinner and respondent Board of Elections to take appropriate steps to permit petitioners to register to vote at the Monroe County Jail, and (3) directing respondent Board of Elections to hold open their books to complete and effect such registration; (4) directing respondent Sheriff Albert W. Skinner and respondent Board of Elections to make arrangements to permit petitioners to vote in person at their respective polling places, by absentee ballot, or otherwise, and it is further

ORDERED that this order and the supporting papers shall be served on



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ORDER TO SHOW CAUSE

respondent Sheriff Albert W. Skinner by delivering a copy thereof to his office at the Hall of Justice on or before October 12, 1972 at 6 p.m. and on respondent Board of Elections by delivering a copy thereof to its office at 36 Main Street, Rochester, New York on or before October 11, 1972 at 6 p.m.

s/ EMMETT J. SCHNEPP
J.S.C.

AFFIRMATION OF WILLIAM D. EGGERS IN
SUPPORT OF APPLICATION FOR ORDER
TO SHOW CAUSE.

WILLIAM D. EGGERS, attorney at law
of the State of New York, affirms the
following to be true under penalties
of perjury:

1. I am an attorney at law duly
admitted to practice in the State of
New York.

2. This proceeding is brought on
by an order to show cause because of the
limited time within which effective relief
may be granted. October 10, 1972 is
the last official day for qualified persons
to register to vote in the general election
to be held in November 1972. Unless this
proceeding is brought on to be heard as
soon as practical, the Board of Elections
will close its books for registrations,
the petitioners will be deprived of

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AFFIRMATION OF WILLIAM D. EGGERS IN
SUPPORT OF APPLICATION FOR ORDER
TO SHOW CAUSE

their right to participate in the general
election, and they will be without an
effective remedy for such deprivation.

October 10, 1972

WILLIAM D. EGGERS

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PETITION.

[TITLE OMITTED IN PRINTING]

Petitioners, Edward F. O'Brien, et. al., on behalf of himself and all others similarly situated in Monroe County (hereinafter "Petitioners") for their complaint against the respondents herein, allege as follows:

1. Petitioners are of legal voting age, and are residents of the State of New York and County of Monroe.

2. Petitioners are presently incarcerated in the Monroe County Jail, Rochester, New York, either awaiting trial, or as a result of conviction of a misdemeanor offense.

3. None of the petitioners is excluded from the suffrage as a result of felony conviction or otherwise as provided under Section 152 of the Election Law of New York or elsewhere under the Laws of New York.

PETITION

4. Petitioners are desirous of exercising their constitutionally protected franchise in the forthcoming General Election as is evidenced by their execution of applications to register and vote, attached hereto as Exhibit "A".

5. Attempts have been made on behalf of petitioners by the League of Women Voters, the American Civil Liberties Union and others, to secure for petitioners the right to register to vote, by absentee ballot or otherwise, in said election. Such attempts have been denied by respondents from August, 1972 to the present day, being the last day for registration pursuant to the Election Law. A recitation of the aforesaid attempts and denials is attached hereto in the form of the sworn affidavit of Jean M. Askham, dated October 10, 1972.

PETITION

6. The aforesaid denials have been and continue to be wrongful, without basis in law or fact, and constitute actions by respondents in excess of their authority, and deny to petitioners the rights guaranteed to them by the Election Law, the Constitution of the State of New York, and the Constitution of the United States.

7. Petitioners have no adequate remedy through the administrative process or by law, other than that sought herein.

8. No application has been made for the same or similar relief.

WHEREFORE, Petitioners, and each of them, respectfully request this Court:

1. To compel, by order pursuant to Section 331 of the Elections Law and Article 78 of the New York Civil Practice Law and Rules, and such other laws of the

PETITION

United States and the State of New York as it shall find applicable, the respondent Board of Elections to register petitioners, by absentee form or otherwise to vote in the forthcoming General Election;

2. Pending the registration sought above, that the Court order the books and rolls of the respondent Board of Elections kept open and available for said registration;

3. That the Court order respondent Skinner to allow necessary access to Petitioners by the Board of Elections and other such persons as may be necessary to effectuate the registration sought;

4. That the Court order respondents to take all necessary measures to enable and assist Petitioners to vote in the forthcoming election, either in person, by absentee ballot, or otherwise.

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PETITION

5. For such other relief as to the Court shall appear necessary and reasonable to protect the rights of petitioners.

Respectfully submitted,

RUTH B. ROSENBERG
WILLIAM D. EGGERS
DAVID N. KUNKEL
Attorneys for Petitioners

PETITION

State of New York,
County of Monroe,
City of Rochester, ss:

EDWARD F. O'BRIEN, being duly sworn,
says: I am one of the petitioners named
in the foregoing petition, and that the said
petition is true to my knowledge except
as to the matters therein stated to be
alleged on information and belief,
and that as to those matters I believe
them to be true.

s/ EDWARD F. O'BRIEN

[jurat omitted in printing]

**AFFIDAVIT OF JEAN M. ASKHAM IN SUPPORT
OF PETITION.**

State of New York,
County of Monroe,
City of Rochester, ss:

JEAN M. ASKHAM, being duly sworn,
deposes and says that:

1. She is a resident of Monroe County residing at 28 Henderson Drive, Penfield, New York, and is Voter Service Chairman and Second Vice President of the League of Women Voters of the Rochester Metropolitan Area, Inc.

2. On or about July 18, 1972, the County of Monroe Legislature authorized an expanded program of voter registration whereby mobile registration units were set up with volunteer registrars to go to any site in the County approved by the Election Commissioners.

AFFIDAVIT OF JEAN M. ASKHAM IN SUPPORT
OF PETITION

3. The program was a recognition by the Legislature that many persons entitled to vote were unable to register because of the inconvenient location of the Central Registration facilities together with the hours of operations.

4. The League of Women Voters recognized another group of persons legally entitled to vote but who were unable to register because they were physically restrained from leaving their temporary place of residence, i.e., those persons who were awaiting trial in the County Jail or who were serving sentences as convicted misdemeanants.

5. On or about August, 1972, Mitchell Kaidy, representing the League of Women Voters, requested of Sheriff Skinner that mobile registrars be permitted

AFFIDAVIT OF JEAN M. ASKHAM IN SUPPORT
OF PETITION

to enter the County Jail to register eligible voters and was denied permission.

6. On or about the last week of September deponent discussed the problem of registering prisoners with Robert Northrup, a Commissioner of Elections for Monroe County.

7. Deponent was advised by Mr. Northrup that she was correct in her interpretation of the State Election Law that the aforesaid prisoners had not lost their right to vote or to register to vote but that, as a practical matter, there was no way to accomplish their registration or voting unless the Sheriff took the eligible prisoners to their respective polling places for registration and again on Election Day to vote.

AFFIDAVIT OF JEAN M. ASKHAM IN SUPPORT
OF PETITION

8. Deponent then suggested that registration and voting be accomplished by absentee forms as was done in the instance of registering and voting for persons in county homes.

9. Mr. Northrup replied that this could not be done for prisoners since they were neither sick, physically disabled or out of the county.

10. Deponent has reviewed the State Election Law and has consulted with counsel and can find no provision which provides a form for absentee registration or voting by persons eligible to vote who are not physically disabled, ill, or out of the county for business or vacation purposes, although it is perfectly clear that prisoners are physically restrained from

AFFIDAVIT OF JEAN M. ASKHAM IN SUPPORT
OF PETITION

attending the registration locations and polling places for the purpose of exercising their right to vote.

11. Such a discrimination against prisoners denies them the equal protection of the law, their constitutional right to vote, and due process, as all those rights are incorporated into the Fourteenth Amendment in connection with the State of New York's failure to provide a mechanism for their exercising their franchise.

12. On or about October 7, 1972, prisoners in the County Jail in Monroe County were provided with a form on which they could indicate their eligibility to register and vote and their wish to do so, pursuant to the Section 151 of the State Election Law.

AFFIDAVIT OF JEAN M. ASKHAM IN SUPPORT
OF PETITION

13. Approximately 72 prisoners completed these forms and they were delivered to deponent late in the day on October 10 by a County Jail official.

14. The original of these applications were delivered to the Commissioners of Elections on October 10, 1972, the last day for registration for the November Presidential and local election. True and correct copies of these applications are attached hereto as Exhibit "A".

15. A demand for assistance was again made upon Andrew Maloney, [sic] (Assistant to the Sheriff) on October 10th and Mr. Maloney [sic] indicated that he was willing to allow absentee registration and voting forms to reach the eligible prisoners but could not deliver the said prisoners to the polling places or

AFFIDAVIT OF JEAN M. ASKHAM IN SUPPORT
OF PETITION

Central Registration facilities for the purpose of registering and voting.

16. On October 10, 1972, Mr. William Stevens, Counsel for the County, indicated that it was too late, in his opinion, to attempt to cure the disenfranchisement of the eligible prisoners and he was unwilling to review the problem and/or intercede with the Election Commissioners with respect to these eligible voters.

17. Accordingly, there is no opportunity for administrative action of this important constitutional question and the time for registration elapses at the end of today.

18. The League of Women Voters, and the Genesee Chapter of the American Civil Liberties Union, and all similar

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**AFFIDAVIT OF JEAN M. ASKHAM IN SUPPORT
OF PETITION**

civic minded organizations urge this
Court to require the Election Commissioners
to permit absentee registration and voting
to eligible prisoners in the County of
Monroe.

JEAN M. ASKHAM

[jurat omitted in printing]

[proof of service omitted in printing]

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EXHIBIT A, ANNEXED TO PETITION.

[TITLE OMITTED IN PRINTING]

October 6, 1972

To: Prisoners awaiting trial and
Prisoners convicted of crimes other
than felonies

From: League of Women Voters and American
Civil Liberties Union

You have NOT lost your RIGHT to VOTE
or your RIGHT to REGISTER because you
are in jail.

No one has ever voted from jail
here before. No system has been set up
to handle it.

But if YOU want to register and/or
vote, we'll go to bat for you. We'll see
if we can get rid of the stumbling blocks
to your voting.

We need your name, home address,
and signature NOW. Registration closes
Tuesday, October 10.

EXHIBIT A, ANNEXED TO PETITION

To vote here you must be at least
18 years old, a citizen and a resident of
Monroe County AND YOU MUST BE REGISTERED.

If you want to vote, fill out the
form below.

- - - - -

Yes, I want to register. X

Yes, I want to vote. X

Name: EDWARD F. O'BRIEN

Home address: 703 Thurston Rd., Rochester,
N.Y. 14619

Signature: EDWARD F. O'BRIEN

EXHIBIT A, ANNEXED TO PETITION

October 6, 1972

To: Prisoners awaiting trial and
Prisoners convicted of crimes other
than felonies

From: League of Women Voters and American
Civil Liberties Union

You have NOT lost your RIGHT to VOTE
or your RIGHT to REGISTER because you
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No one has ever voted from jail
here before. No system has been set up
to handle it.

But if YOU want to register and/or
vote, we'll go to bat for you. We'll
see if we can get rid of the stumbling
blocks to your voting.

We need your name, home address,
and signature NOW. Registration closes
Tuesday, October 10.

To vote here you must be at least
18 years old, a citizen and a resident of

EXHIBIT A, ANNEXED TO PETITION

Monroe County AND YOU MUST BE REGISTERED.

If you want to vote, fill out the
form below.

- - - - -

Yes, I want to register I'm already registered

Yes, I want to vote. X

Name: Gregory Houston Healy

Home address: 348 University Avenue
 Rochester, N.Y. 14607

Signature: GREGORY H. HEALY

[70 identical forms, one for each of the
other named appellants, are omitted in
printing by agreement of counsel. 4 of
these other 70 state that they are already
registered and want to vote. The remainder
state that they want to both register and
vote.]

[Affidavit of Service omitted in
Printing.]

ANSWER AND MOTION TO DISMISS.

[TITLE OMITTED IN PRINTING]

Respondents for their Answer in the above entitled matter, allege as follows:

1. The Respondents do not have sufficient information to form a belief as to the truth or falsity of all the allegations made in paragraphs numbered 1, 2, 3, 4 and 8 of the complaint herein.

2. The Respondents deny each and every allegation in paragraphs numbered 5, 6 and 7 of the complaint herein.

Further, the Respondents move to dismiss the Petition in this matter as on its face it fails to state a cause of action

Dated: Rochester, New York,
October 17, 1972.

WILLIAM J. STEVENS
Attorney for Respondents
Office & Post Office Address
307 County Office Building
Rochester, New York 14614
Phone: 454-7200
MICHAEL K. CONSEDINE, of Counsel

ANSWER AND MOTION TO DISMISS

State of New York
County of Monroe,
City of Rochester, ss:

KENNETH POWER and ROBERT NORTHRUP,
being duly sworn, deposes and says that
they are Respondents in this action; that
they read the foregoing Answer and Motion
to Dismiss and know the contents thereof;
that the same is true to the knowledge of
deponents, except as to the matters
therein stated to be alleged on information
and belief, and that as to those matters
they believe them to be true.

/s/ KENNETH POWERS

/S/ ROBERT NORTHRUP

[Jurat omitted in printing]

[Affidavit of Service omitted in printing]

JUDGMENT (DENOMINATED "ORDER") OF NEW
YORK STATE SUPREME COURT, MONROE
COUNTY (BLAUVELT, J.).

At a Special Term of the Supreme
Court held at the Hall of
Justice, Rochester, Monroe
County, New York on October
18, 1972.

EDWARD F. O'BRIEN, et al.,

Petitioners,

against

ALBERT SKINNER, Sheriff of Monroe County
and KENNETH POWER and ROBERT NORTHRUP,
being the Monroe County Board of
Elections,

Respondents.

On the order to show cause dated
October 11, 1972, the petition, verified
by petitioner Edward F. O'Brien on
October 11, 1972, the affidavit of
Jean M. Askham, sworn to October 10, 1972,
exhibit A, constituting a signed statement
by each of the petitioners and expressing

JUDGMENT (DENOMINATED "ORDER") OF NEW
YORK STATE SUPREME COURT, MONROE
COUNTY (BLAUVELT, J.)

the desire of each to register or to vote, with proof of due service thereof, all in support of the petition, the answer of the respondents, verified October 17, 1972, with proof of due service thereof, in opposition thereto, and after hearing William D. Eggers, Esq., attorney for petitioners, in support of the petition, and William J. Stevens, Esq., Monroe County Attorney (Michael K. Consedine, Esq., of Counsel), attorneys for respondents in opposition thereto, and upon the decision of the court dated October 20, 1972, it is ordered

1. The petition is dismissed on the merits, without prejudice to such of the petitioners as may now be registered to

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JUDGMENT (DENOMINATED "ORDER") OF NEW
YORK STATE SUPREME COURT, MONROE
COUNTY (BLAUVELT, J.)

vote to make due and timely applications
for absentee ballots.

Dated: October 24, 1972.

Enter

/s/ HON. ARTHUR ERVIN BLAUVELT
Justice Supreme Court

[Affidavit of Service omitted in printing]

DECISION OF THE NEW YORK STATE SUPREME
COURT, MONROE COUNTY (BLAUVELT, J.)
DATED OCTOBER 20, 1972.

(Printed at pp. 18-21 of the Appellants'
Jurisdictional statement.)

ORDER OF THE NEW YORK STATE SUPREME COURT,
APPELLATE DIVISION, FOURTH DEPARTMENT
ENTERED OCTOBER 27, 1972.

(Printed at pp. 22-23 of Appellants'
Jurisdictional statement.)

ORDER OF THE NEW YORK COURT OF APPEALS
ENTERED NOVEMBER 3, 1972.

(Printed at pp. 29-31 of Appellants'
Jurisdictional statement.)

OPINION OF THE NEW YORK COURT OF APPEALS.

(Printed at pp. 24-28 of Appellants'
Jurisdictional statement.)

OPINION OF MR. JUSTICE MARSHALL,
CIRCUIT JUSTICE.

(Printed at pp. 32-34 of Appellants'
Jurisdictional statement.)